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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Enforcement of the Used Oil Mixture Rule in Alaska, Hawaii, Iowa, and Puerto Rico Pending Completion of a Review of the Validity of the Rule

FROM: David Nielsen, Director *D. Nielsen*  
RCRA Enforcement Division

TO: Regional Counsel, Regions II, VII, IX and X  
Director, Air and Waste Management Division, Region II  
Director, Air, RCRA, and Toxics Division, Region VII  
Director, Hazardous Waste Management Division, Region IX  
Director, Chemicals and Waste Management Office, Region X

The purpose of this memo is to clarify the Agency's current position regarding the enforcement of the used oil mixture rule in the four states that have not received authorization to implement the RCRA program for hazardous waste management ("base program"): Alaska, Hawaii, Iowa, and Puerto Rico. In order to maintain the status quo in these states pending resolution of the issues underlying the stay of the used oil mixture rule, EPA has committed to exercising enforcement discretion in applying the land disposal restrictions to certain mixtures of used oil.

On October 30, 1995, EPA issued an administrative stay postponing the effectiveness of the portion of the RCRA recycled used oil management standards<sup>1</sup> that allowed wastes exhibiting hazardous characteristics to be mixed with used oil destined for recycling and to be managed under the used oil management standards (used oil mixture rule). Significantly, wastes managed under the used oil management standards are not managed as hazardous wastes under RCRA subtitle C and, therefore, are not subject to the land disposal restrictions (LDRs). EPA issued this stay after the U.S. Court of Appeals for the District of Columbia Circuit declined to vacate the used oil mixture rule and remanded the rulemaking record to EPA to determine the validity

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<sup>1</sup> Hazardous Waste Management System; Identification and Listing of Hazardous Waste Recycled Used Oil Management Standards, 57 Fed. Reg. 41,566 (Sept. 10, 1992).

of the mixture rule. Safety-Kleen Corp. v. EPA, No. 92-1629. The purpose of the stay is to discourage additional states from adopting the portion of the rule that is being reevaluated.

The stay issued by EPA went into effect on December 29, 1995. As a result, EPA will no longer authorize states for the used oil mixture rule. Under the terms of the stay, the current status of all existing state used oil management standards will remain in place. Therefore, states that are currently authorized for the used oil mixture rule will continue to be authorized and the rule will remain in effect until the state regulations are revised to reflect the federal stay. In states that are currently authorized to administer the RCRA base program but are not authorized for the used oil mixture rule, including those states with pending authorization applications, the preexisting regulations applicable to hazardous waste mixtures remain in effect.

In the four states that are not authorized to administer the RCRA base program (Alaska, Hawaii, Iowa, and Puerto Rico), the used oil mixture rule will no longer be in effect as of December 29, 1995. Therefore, the RCRA subtitle C requirements applicable to hazardous waste mixtures will be reinstated for mixtures of used oil and hazardous waste pending the completion of a rulemaking on the validity of the used oil mixture rule. However, to minimize the impact of the stay on the regulated community in these four states, EPA has committed to maintaining the status quo by exercising enforcement discretion for violations of LDRs that may result from the disposal of mixtures of used oil and characteristic hazardous waste. In a brief filed by the Department of Justice on December 5, 1995, the United States agreed to initiate enforcement actions only in cases of egregious violations of the LDRs that "may present an imminent and substantial endangerment to health or the environment," under section 7003(a). Section 7003 applies to solid as well as hazardous wastes and is not restricted by the applicability of RCRA regulations, such as the LDRs.

Used oil mixed with hazardous wastes has been proven toxic to humans and wildlife. If managed improperly, it can reach surface water and drinking water and can be dispersed through the air. In the past, mismanagement of used oil mixed with hazardous wastes has caused conditions posing severe threats to health and the environment, including cases of wildlife damage and wildlife death and contamination of soils and drinking water wells in areas surrounding Superfund sites associated with used oil disposal.

In determining whether a violation of the LDRs is egregious and may present an imminent and substantial endangerment, EPA must assemble specific evidence about the type and extent of contamination and its potential impact on health or the

environment. However, proof of **actual** harm is not required nor is **certainty** that an endangerment is imminent and substantial. In addition, an "imminent" risk of harm may exist even when the risk is not **immediate**. Further, a risk of harm may be "substantial" even if the risk cannot be quantified; what is required is "some reasonable cause for concern that someone or something may be exposed to a risk of harm..." U.S. v. Conservation Chemical Co., 619 F. Supp. 162, 194 (W.D.Mo 1985).

If you have any questions about this policy or its application, please feel free to call me (202 564-2270) or have your staff contact Mary Andrews of my staff (202 564-4011).